IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HONOURBALE SRI JUSTICE N.V.RAMANA

W.P. No. 6819 OF 2006

Dated : April 6, 2006

Between:

J.L. Narayana

Petitioner

AND

The Chairman,

Industrial Tribunal-cum-Labour Court,

Godavarikhani, Karimnagar District

and three others

Respondents

THE HONOURBALE SRI JUSTICE N.V.RAMANA

W.P. No. 6819 of 2006

Oral order:

The award dated 10.12.2001, passed by the first respondent - Presiding Officer, Industrial Tribunal-cum-Labour Court, Godavarikhani, Karimnagar, dismissing I.D. No. 31 of 2000, filed by the petitioner under Section 2-A(2) of the Industrial Disputes Act, 1947, is challenged in this writ petition.

On 12.12.1992, while the petitioner was conducting the bus of respondent Nos. 2 to 3-Corporation on the route Bhainsa – Nizamabad, a check was exercised, and the checking officials found that the petitioner failed to collect fare and issue tickets to certain passengers and also misbehaved with the checking officials and did not allow them to record the statements of the passengers. The Corporation issued a Charge Memo dated 19.12.1992, to which the petitioner submitted his explanation on 23.12.1992. Dis-satisfied with the explanation, on 6.1.1993, the Corporation issued a charge sheet, to which the petitioner submitted his explanation on 13.3.1993. Not convinced with the explanation, the Corporation ordered an enquiry, and the Enquiry Officer, and it is the contention of the petitioner that the Enquiry Officer, acting as a Prosecuting Officer, in violation of the principles of natural justice, submitted report on 18.5.1993 holding that the charges are proved. Based on the said enquiry report, a notice dated 8.7.1993 to show cause as to why the petitioner should not be removed from service was issued. The petitioner submitted his explanation thereto on 20.8.1993, but respondent No.4, passed the order of removal on 28.9.1993. The appeal preferred thereagainst by the petitioner to the Divisional Manager –respondent No.3 herein was also dismissed on 22.11.1993. Thereafter, the petitioner preferred Review Petition to the Regional Manager – respondent No.2 herein, who by order dated 17.3.1994, while reinstating the petitioner into service postponed his increment for a period of two years with cumulative effect and directed that the intervening period from the date of removal to the date of joining, should be treated as not on duty.

Assailing the said order, the petitioner raised an industrial dispute in I.D. No.31 of 2000, and the Labour Court, vide award dated 10.12.2001, impugned in this writ petition, dismissed the same. Questioning the said award, the petitioner filed this writ petition.

Heard both the counsel and perused the award of the Labour Court.

The main contention of the learned counsel for the petitioner is that no fair opportunity was given to the petitioner by the Enquiry Officer while conducting the domestic enquiry, and respondent No.1 without considering the said aspect, and without deciding the question as to whether the domestic enquiry conducted against the petitioner, was valid, as a preliminary issue, dismissed the I.D. which is illegal and arbitrary. It is further contended that respondent No.1 without affording any opportunity to the petitioner to lead evidence either on the aspect of validity of domestic enquiry or quantum of punishment, and without giving any findings thereon, has mechanically confirmed the order of respondent No.2, which is illegal, arbitrary and violative of the principles of natural justice. It is further contended that the Enquiry Officer while conducting the enquiry acted as a Prosecuting Officer,

which is contrary to the principles of natural justice.

A reading of the impugned award would disclose that the Presiding Officer, had dealt with the matter in a very slipshod manner. The manner in which the award impugned in this writ petition was passed, was not expected from a Presiding Officer of the rank of a District Judge. The Presiding Officer in the award has not marshaled the facts in detail, he has not adverted to the rival contentions of the parties nor has he recorded any findings on the contentions raised. The award merely reflects that the petitioner questions the punishment of with-holding of two increments with cumulative effect and that respondents filed the counter. Thereafter, Presiding Officer proceeds to frame the question, whether the charges against the petitioner are proved, and if so whether the punishment imposed is justified. While dealing with the question, the Presiding Officer, referred to the contents of the exhibits relied on by the Corporation, and without recording any reason or finding abruptly came to the conclusion that the charges are proved. Apart from this, the award does not reflect whether evidence was let in by the parties, and if so, who were examined. The Presiding Officer, did not even give any finding on the question of validity or otherwise of the domestic enquiry, which question, the petitioner contends that he had raised before the Labour Court. Irrespective of whether such a question is raised by the workman or not, in cases where workmen, who have been removed or dismissed from service or have been imposed major punishments, after a departmental enquiry, raise industrial disputes, the fundamental and primary duty of the Labour Court, is to frame an issue as to validity or otherwise of the departmental enquiry, as a preliminary issue, *inter alia*, and first decide the preliminary issue in the light of the contentions and the evidence on record. In **Cooper Engineering Limited v. P.P. Mundhe**, the apex Court held:

> "…We are, therefore, clearly of the opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the labour court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties, that question must be decided as a preliminary issue..."

Therefore, unless and until the question as to the validity or otherwise of the departmental enquiry is decided as preliminary issue, the Labour Court cannot proceed further in the matter. Day in and day out, the awards passed by the present Presiding Officer, are called in question before this Court in writ petitions. It is very unfortunate to note that the Presiding Officer, has disposed of several Industrial Disputes in a slipshod manner by passing cryptic orders, which do not conform to the basic tenets of judgment writing. To top it all, the basic question, namely whether the departmental enquiry is valid or not, is not framed and decided, as a preliminary issue, and no finding is given thereon. Because of this reason, this Court is compelled to remand the matters to the Labour Court, and in fact, had remanded several such matters to the Labour Court. A Division Bench of this Court, on an earlier occasion in W.A. No. 1490 of 2002, vide judgment dated 30.09.2005, following the judgment of the apex Court in **Cooper Engineering Limited v. P.P. Mundh**e, remanded the matter to the Labour Court, for adjudication of the matter

afresh from the stage of determination of the validity of the domestic enquiry. The manner in which the Presiding Officer, is disposing of the Industrial Disputes, is unnecessarily resulting in docket explosion, and the remand in writ petitions has become a routine affair, and is thus having a cascading effect on all concerned. Therefore, it is appropriate that the Presiding Officers of the Labour Courts, while disposing of the matters, shall strictly adhere to the tenets of judgment writing and dispose of the matters in accordance with law.

Be that as it may, in view of the fact that the Labour Court did not frame and did not give any finding on the question of validity or otherwise of the departmental enquiry, both the counsel agreed that the award be set aside and the matter be remanded to the Labour Court for adjudication afresh.

Having regard to the settled proposition of law and having regard to the agreed stand taken by both the counsel, the writ petition is allowed and the impugned award of the Labour Court is set aside, and the matter is remitted to the Labour Court, for adjudication afresh from the stage of determination of the validity of the Domestic Enquiry. No costs.

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N.V.RAMANA, J.

Dated: 6th April, 2006

KSR/MAS